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November 14, 2006

R. Peder Hanson
Department of Natural Resources
and Environmental Control
Division of Water Resources
R&R Building
89 Kings Highway
Dover, Delaware 19901

Re: Allen Family Foods, Inc.
Discharge Permit No. DE-0000299 / WPCC-3131E176

Dear Mr. Hanson:

This law firm represents Allen Family Foods, Inc. ("Allen") and is written as a follow-up to your previous conversations regarding an isolated incident at Allen's facility in Harbeson. As we discussed and reported, Allen's facility experienced a temporary and exceptional incident beyond Allen's reasonable control wherein the ammonia discharge levels exceeded the permitted limits.

Allen submits this letter to DNREC in support of its position that the ammonia release and incident qualifies as an "upset" under Section II.A.9 of Allen's NPDES permit referenced above. After advising DNREC of the incident within twenty-four (24) hours, Allen initiated an internal investigation as to the possible cause for the ammonia exceedance. Normally, ammonia is tested on a five (5) day per week basis using the Hach digestion method with results determined by a Hach 890 colorimeter. On a normal operating basis, and as can be seen through Allen's previously submitted DMRs, ammonia levels are consistently below the 4.0mg/l daily maximum and monthly average.

On September 11, 2006, a slug or load of "hatchery sludge" entered the system. It is high in nitrogen with a dark black color. The operator noticed the sludge in the DAF unit. Subsequent results from September 12 through 26 were below permit limits. On September 26, ammonia was 1.68 mg/l. The wastewater discharge appeared good with low turbity, ample dissolved oxygen, with ph normal. There was no reason to expect high ammonia (N) levels.

However, on September 27, Allen experienced elevated levels. The reading from EnviroCorp Labs showed 3.49 mg/l. On September 28, the in-house testing of the clarifier revealed 18.0 mg/l. The plant immediately increased process control testing for ammonia as N throughout the entire biologic treatment system. This included filtering samples from Ponds A and B with CMAS 1 and 2 performed to increase accuracy in the test results.

On September 29, in-house testing of the clarifier indicated ammonia levels increased to 22 mg/l and 27.0 mg/l. On both tests, Allen called ChemTreat, Inc. to inspect the system, review process control strategy and analyze chemical dosage activity. ChemTreat advised that the system should recover quickly because of the ample dissolved oxygen and normal ph levels. It was thought it was a simple toxic upset.

On October 1, the ammonia level in the clarifier increased to 34 mg/l. Allen inspected the system again in an attempt to determine the cause. Allen ceased injecting hatchery waste until the situation was resolved. On October 2, the ammonia levels ranged from 31 to 36 mg/l throughout the plant. At 11:45 a.m., Allen determined to no longer allow discharging until the matter was resolved and changed to a recycle mode. Tom Brinson also notified DNREC of the situation at this time. Only recirculation of the CMAS system occurred.

ChemTreat and Allen contacted Maryland Biological, Inc. to purchase commercially produced nitrifying bacteria to add to the CMAS system to increase the nitrification and plant recovery process. Allen purchased six (6) 10-pound containers on October 3 and twelve (12) more on October 4 and 5. Additional quantities (24) were ordered to continue the biologic augmentation process.

On September 26 and 27, test results showed ammonia in the composite sample at 3.49 mg/l. The flow was 1.21 million gallons. This resulted in 35.2 lbs/day discharged. Allen contacted Allen McCloskey at this time. Allen also arranged for Chesapeake Labs to initiate split sampling with Allen's in-house lab.

On October 3, the ammonia level increased back to 19 mg/l. Allen immediately reevaluated the entire treatment system in an attempt to determine the cause or source of the problem. Allen also followed up its telephone call to DNREC with a letter on this date. ChemTreat returned to the plant to assist in the investigation.

After assessing the treatment system again and not finding a cause, Allen investigated all liquid input sources. It was discovered that the cafeteria cleaning crew switched to a sanitation process that used quaternary ammonia. As you may be aware, quaternary or "quat" kills the nitrifiers that treat the wastewater. Chesapeake Labs tested for the cleaning solution and found 4 mg/l in the clarifier and 4 mg/l in the RAS. Slightly under 2 mg/l was found in the rest of the system, including Ponds A and B, as well as CMAS 1 and 2.

During this time, the wastewater plant remained in recycle mode, with no discharge. Allen also decided to shut down the processing plant as the treatment system had reached capacity.

Upon discovering the quat, Allen immediately terminated its use in the cafeteria sanitation process. It also ordered six (6) 10-pound containers of nitrifiers for CMAS 1 and 2. On this date, Allen McCloskey and Amy Cavanaugh of DNREC inspected the plant.

On October 4, the processing plant remained closed. Tests for ammonia showed 26 mg/l in the clarifier. The wastewater plant remained in recycle mode and no discharge occurred. Allen added twelve (12) containers of nitrifiers to CMAS 1 and 2. Maryland Biochemical was on-site to assist in the recovery operation. Larry Enders also spoke with you on this day and provided a status report regarding the situation. You stated that according to the permit, if Allen could illustrate an upset condition, then discharge could occur.

On October 5, the ammonia test results showed 22 mg/l. Allen added another twelve (12) containers of nitrifiers.

On October 6, test results showed ammonia levels at 12.8 mg/l and 13 mg/l. Testing was performed using a new Oakton Ion 500 meter. Allen obtained twenty-four (24) containers of nitrifiers to the system and telephoned you with a status report.

On October 7, Allen added twelve (12) containers of nitrifiers to CMAS 1 and 2. Allen continued to closely monitor the system. Tests on this date showed ammonia levels dropping to 9.9 and 9.7 mg/l.

On October 8, ammonia levels were 2.7 mg/l. On October 9, the reading dropped back to 0.17 mg/l and 0.12 mg/l. A composite from Enviro Corp. Lab showed 0.21 mg/l. Allen notified DNREC of the results on this date.

Based on the above series of events, investigation and remedial action, Allen asserts that the exceedances qualify as "upsets" under Section II.A.9 of its NPDES permit. Allen operates the system in a prudent and workmanlike manner in compliance with normal operating procedures. But for the unknown introduction of the quat, there would have been no effluent concern with ammonia. As soon as Allen knew of the problem, it notified DNREC and maintained contact with the agency throughout the investigatory and remedial process. At all times, Allen took immediate and substantial measures to minimize any possible adverse impact, including ceasing discharges and closing the processing plant. Accordingly, DNREC should conclude that the events qualify as an "upset" under the permit.

If you have any questions or require additional information, please call me.

Very truly yours,

Charles R. Schaller

cc: Michael Pilcher
Larry Enders
Tom Brinson